

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTHONY LYNN SMITH,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

CRIMINAL ACTION NO. 4:13CR159

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 1, 2017, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Tracey Batson.

On April 3, 2014, Defendant was sentenced by the Honorable United States District Judge Thad Heartfield of the Eastern District of Texas after pleading guilty to the offense of Felon in Possession of a Firearm. This offense carried a statutory maximum imprisonment of ten (10) years. The guideline imprisonment range, based on a total offense level of 13 and a criminal history category of IV, was 24 to 30 months. Defendant was sentenced to twenty-four (24) months imprisonment to run concurrent to imprisonment imposed in Docket No. 25269, 6<sup>th</sup> Judicial District Court of Lamar County; followed by three (3) years of supervised release, subject to the standard conditions of release plus special conditions including financial disclosure, mental health

treatment, and a \$100 special assessment. On May 5, 2015, Defendant completed his period of imprisonment and began service of his term of supervised release.

On April 20, 2016, the U.S. Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt. 48 Sealed]. The Petition asserted that Defendant violated seven (7) conditions of supervision, as follows: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon; (3) Defendant shall refrain from any unlawful use of a controlled substance; (4) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (5) Defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered; (6) Under the guidance and direction of the United States Probation Office, the Defendant shall participate in any combination of psychiatric, psychological, or mental health treatment as deemed appropriate by the treatment provider; and (7) Defendant shall pay a special assessment of \$100.00 which shall be due immediately.

The Petition alleges that Defendant committed the following acts: (1) and (2) On November 1, 2015, at approx. 1:30 AM, Mr. Smith was arrested by a Texas DPS Trooper in Paris, Texas for the felony offense of Unlawful Possession of Firearm by Felon, in violation of Texas Penal Code § 46.04. During the same incident, he was also arrested for Operating a Vehicle with Wrong License Plate/Registration Insignia, No Driver License, and Failure to Maintain Financial Responsibility, violations of Texas Transportation Code §504.944, §521.021, and §601.191 respectively. According to the arrest report, the vehicle stop was conducted after the discovery of a registration violation and Mr. Smith was found to be the driver and sole occupant. He was

detained after being unable to provide a valid driver's license or proof of insurance. A search incident to arrest revealed a loaded .380 caliber Cobra handgun under Mr. Smith's seat. The arrest report also indicates that while being booked at the Lamar County Jail, Mr. Smith was questioned about the firearm and stated to the DPS Trooper he was carrying it for protection because of all the people getting killed around Paris, Texas. Mr. Smith was released the same date on a \$3,000 bond, and as of this writing Paris Municipal Court has no record of formal charges filed in relation to the traffic offenses. The Lamar County District Attorney's Office rejected the state felony case on November 19, 2015, and it was investigated by the Bureau of Alcohol, Tobacco, Firearms and Explosives. The charge of Felon in Possession of a Firearm, a violation of 18 U.S.C. § 922(g)(1), was ultimately accepted by the United States Attorney's Office in the Eastern District of Texas. On February 4, 2016, Mr. Smith was arrested by the United States Marshals Service (USMS) for a subsequent Felon in Possession of a Firearm offense, in violation of Title 18 U.S.C. § 922(g)(1). According to the arrest report, members of the USMS and Paris Police Department executed a federal warrant at Mr. Smith's residence located at 310 13th St. NW in Paris, Texas. Forced entry was required and the offender was detained with a female subject, Yhazmine Caldwell, inside the home. A .25 caliber Titan handgun was observed in plain view, resting atop a dresser inside Mr. Smith's bedroom, near what appeared to be a usable amount of marijuana. The firearm was discovered to be loaded with no round in the chamber. A search warrant was then obtained by Paris Police, based on the plain view evidence, and officers recovered a .357 bullet in a dresser drawer in the offender's room. Three additional handguns were located in a separate bedroom; however, Mr. Smith's uncle claimed possession of those weapons. Regarding the new firearms charges, a two count indictment was handed down by a federal grand jury in the Eastern District of Texas on February 11, 2016, in Docket No. 4:16CR00021. Mr. Smith appeared before the Court

and waived a detention hearing on February 23, 2016. The Defendant remains in custody at this time and was recently sentenced by the Honorable United States District Judge Marcia Crone; (3) and (4) On November 6, 2015, Mr. Smith submitted a urine specimen that tested positive for marijuana. The test was confirmed by Alere Laboratory; (5) When questioned about the positive drug test on November 6, 2015, Mr. Smith admitted to being inside a club with individuals that were using marijuana on or about October 30, 2015; (6) and (7) Mr. Smith failed to report as directed to Pillar Mental Health Systems, LLC on August 4, 2015. Mr. Smith failed to report as directed to Texoma Counseling Associates (Blackburn Social Services) on October 15 and November 2, 2015. On July 22, 2015, Mr. Smith signed a Probation Form 7S(a), Instructions for Fine and/or Restitution Payments. According to the form he was instructed to pay no less than \$20 each month, beginning on or before July 25, 2015, and continuing thereafter until paid in full. As of this writing Mr. Smith has failed to make a payment and the \$100 balance remains unpaid.

Prior to the Government putting on its case, Defendant entered a plea of true to allegations one (1) and two (2) of the Petition, specifically Defendant committed another federal, state, or local crime and possessed firearm, ammunition, destructive device or other dangerous weapon. The Government withdrew allegations three (3), four (4), five (5), six (6) and seven (7). Having considered the Petition and the plea of true to allegations one (1) and two (2), the Court finds that Defendant did violate his conditions of supervised release.

Defendant waived his right to allocate before the District Judge and his right to object to the report and recommendation of this Court.

### **RECOMMENDATION**

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of fourteen (14) months, with no term of supervised release to follow.

The Court also recommends that Defendant be housed in the Bureau of Prisons El Reno facility, if appropriate.

**SIGNED this 2nd day of February, 2017.**

A handwritten signature in black ink, appearing to read 'C.A. Nowak', written over a horizontal line.

Christine A. Nowak  
UNITED STATES MAGISTRATE JUDGE